

HANDOVER DIALOGUES

UN Special Rapporteur on the Right to Health

A discussion paper on

Mandate history, progress, and importance as it is handed over to Dr Tlaleng Mofokeng

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Since 2002 the United Nations, through the (now) Human Rights Council, has mandated experts to advance the right to the enjoyment of the highest attainable standard of physical and mental health. Called Special Rapporteurs, these independent experts help promote and protect the right to health throughout the world. They identify general trends related to the right to health, highlight specific challenges and recommend solutions, and undertake country visits to examine the situation concerning the right to health in a specific country. Each Special Rapporteur maps out their own priorities for the mandate, and selects which countries to visit. Their visits are not limited to countries, but can include institutions.

The former rapporteurs has each contributed significantly to our understanding of the right to health. Paul Hunt as the first special rapporteur on this right (2002-2008) had the task of advising states and others that there is a right to health, and it is not merely a slogan. His mandate developed the 'right to health framework', which laid out the principles of this right, and which has continued to be developed over the past 18 years.¹ These principles, developed especially out of General Comment 14, have now been applied by all the rapporteurs in thematic reports, and drawn on in country missions. Paul believes these have led to a 'common vocabulary' when talking about the right to health, whether using it to examine failings and push for decriminalization (as featured in Anand Grover's work), or to expose the impact of an over-reliance of biomedical models of health care, and power imbalances, on the right to health (as seen throughout Dainius Pūras' work). As Tlaleng Mofokeng takes up the mandate as the first woman in the role, and from the global south, her interests in decolonising global health, promoting sexual and reproductive health and rights, and empowering people to claim their rights, will provide further insights and precedents as to the meaning of this right.

Tlaleng took over the mandate in July 2020 from Dainius. The *Health and Human Rights Journal* published a Virtual Roundtable discussion involving the four mandate holders, in which they spoke of their backgrounds and experiences prior to and during the mandate². In this first dialogue in the series of "Handover Dialogues" the four rapporteurs meet again online to continue their conversation, to exchange experiences and tales

from their time in the role, and to explore how the mandate has contributed to global trends concerning human rights and the right to health. The panel, which includes the rapporteurs and Dragana Korljan of the Office of the High Commission of Human Rights, will respond to questions from the participants.

In the Virtual Roundtable discussion, Paul suggested that in the 1990s there was an increasing recognition that health was a social right. The creation of the mandate was, he believes, a part of “an incipient trend in the UN to reclaim this wide and rich vision of humanity and human rights”. However, he concedes that social rights are still contested and do not fit well with an individualistic liberal ideology that favours non-interventionist government. Dainius has linked neoliberal economics to the dominance of biomedical paradigms in health care, drawing attention in his reports to the focus this brings to curing diseases, rather than addressing the underlying and social determinants of poor health. He stated in his final report to the UN General Assembly in October 2020, that this biomedical approach “fits well with economic approaches that emphasize individual responsibility for health and well-being, and insurance for health care.”³ All three of the former rapporteurs grappled with different aspects of the dominance of the pharmaceutical sector in health care, its power to influence health care providers and governments, and inequitable pricing policies. These concerns are especially timely as vaccines for COVID-19 are beginning to become available, and the mandate’s role in monitoring and mitigating any unequal impacts of the pandemic will be discussed.

More broadly, the panel will consider how COVID-19 affects our understandings of the right to health and what opportunities it creates to advance health-related rights in a post-pandemic world.

Increasing inequality and related impacts on social rights, such as inequitable access to health care, have been all too evident this year. Globally, the social demographics of COVID-19-related mortality are stark: those who are poor, marginalised, historically discriminated against, or already sick, are much more likely to die than the more privileged, reflecting structural racism across many societies.⁴ The pandemic has drawn attention to multiple human rights failings around the world, leading Tlaleng to call for global health as a whole to be decolonized.⁵

Recent election results, including but not limited to the United States, and uprisings against oppressive regimes elsewhere, gives us a moment to consider the possibility that the pendulum of populism and individualistic-based ideologies has reached its pinnacle. There is a glimmer of hope that people want to change to a world where people’s inherent human rights are realized. The intersection of failures—the heavy tolls both in terms of lives lost and lives made miserable, from discrimination, racism, inequality, and lack of social cohesion and social rights—is demanding redress and remedy.

The first three rapporteurs have developed a body of work on the right to health to inform responses to these demands. Most recently, Dainius has addressed the interrelatedness and indivisibility in all his work, stressing not just that the right to health depends on all other rights being realized, but also, good health relies on good mental health.

In our first handover dialogue, the four rapporteurs will discuss these challenges and reflect on the ways in which they used various tools of the mandate including thematic reports, country mission work, and individual communications to address critical themes and develop the right to health.

In the context of the present global health crisis and global political movements, they will be asked whether they detect an appetite for change in societal values and where contributions on the right to health might align with the changing tide. Will the refrain heard globally—“build back better”—actually result in more sustainable, fairer economies that are less averse to human rights discourse and action?

The pandemic continues to illustrate the interconnectedness of all people, all countries. It epitomises the need for rights-based approaches to all policy: if the most vulnerable people are not protected, nor is anyone else. One sector of society that each of the rapporteurs has addressed has been those who are incarcerated, either in prisons, mental health facilities, forced detention or refugee centres, and elderly people in rest homes. Always hidden, this year the pandemic has exposed their vulnerability, and laid bare their denial of

human rights. In his UN General Assembly report Dainius devoted a whole section to the rights of people who are deprived of their liberty, expressing his alarm at the global tragedy of high fatality rates.⁶

The pandemic has also highlighted gaps in both international law, and in operationalizing that law, with calls being made for a new General Comment to provide concrete recommendations for operationalizing the Siracusa Principles in law and policy.⁷ Other commentators have also called for the International Health Regulations to be reformed, as the pandemic has exposed their continuing weaknesses, contributing to widespread rights violations.⁸

The panel will discuss ways the mandate can make best use of these lessons, and build on the work by all the mandate holders to make healthcare and underlying determinants available, accessible, acceptable and of good quality—achieving universal health care.

We anticipate that this series of webinars will provide the new mandate holder with key contacts, stories of success, lessons from failures, and will equip her to take on this critically important role at a time of great crisis, but with the winds of positive change in the atmosphere.

References

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- 3 D. Puras, UN GA report no. A/75/163, available at <https://undocs.org/A/75/163>.
- 4 A. Chapman, “Ameliorating COVID-19’s Disproportionate Impact on Black and Hispanic Communities: Proposed Policy Initiatives for the United States” 12 Oct 2020, Viewpoint, Health and Human Rights, available at <https://www.hhrjournal.org/2020/10/ameliorating-covid-19s-dis-proportionate-impact-on-black-and-hispanic-communities-proposed-policy-initiatives-for-the-united-states/>
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- 6 See note 2.
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